

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
John W. Ashley	)	File Number EB-02-TP-105
DBA: Ashley Communications	)	
Owner of Antenna Structure Registration Number	)	NAL/Acct. No. 200332700014
1038740 in Dover, Florida	)	
Plant City, Florida	)	FRN 0006-1642-89
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released:** January 22, 2003

By the Enforcement Bureau, Tampa Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find John W. Ashley, DBA: Ashley Communications (“Ashley”), owner of antenna structure #1038740 in Dover, Florida, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.50 of the Commission's Rules (“Rules”).<sup>1</sup> Specifically, we find Ashley apparently liable for failing to comply with prescribed antenna structure lighting and/or marking requirements.

**II. BACKGROUND**

2. Antenna structure #1038740 is located in Dover, Florida. John W. Ashley, DBA: Ashley Communications is the registered owner of this structure. The structure’s Antenna Structure Registration (“ASR”) specifies that the structure should be painted and lighted.

3. On August 21, 2002, agents from the Commission’s Tampa Office inspected Ashley’s antenna structure #1038740 in Dover, Florida. The agents observed that black cables attached to the structure obstructed the antenna structure paint over the entire height of the structure, resulting in poor visibility of the structure.

**III. DISCUSSION**

4. Section 17.50 of the Rules states that antenna structures requiring painting shall be cleaned or repainted as often as necessary to maintain good visibility. The antenna structure owner is responsible for maintaining the structure’s painting.<sup>2</sup> Ashley is the registered owner of antenna structure #1038740. This structure is required to be painted pursuant to Federal Aviation Administration specifications, the

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<sup>1</sup> 47 C.F.R. § 17.50.

<sup>2</sup> See 47 C.F.R. § 17.6(a).

structure's ASR, and FCC rules.<sup>3</sup> On August 21, 2002, cables attached to the structure obstructed the paint over the entire height of the structure, resulting in poor visibility.

5. Based on the evidence before us, we find that Ashley willfully<sup>4</sup> violated Section 17.50 of the Commission's Rules by failing to maintain good visibility of its antenna structure.

6. Pursuant to Section 1.80(b)(4) of the Rules,<sup>5</sup> the base forfeiture amount for failure to comply with prescribed lighting and marking is \$10,000. Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), requires us to take into account "...the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history or prior offenses, ability to pay, and other such matters as justice may require."<sup>6</sup> Considering the entire record, and applying the factors listed above, this case warrants a \$10,000 forfeiture.

#### **IV. ORDERING CLAUSES**

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>7</sup> and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,<sup>8</sup> Ashley is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.50 of the Rules by failing to maintain good visibility of the required antenna structure obstruction markings.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NAL, Ashley SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced in the letterhead above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12<sup>th</sup> Street, SW, Washington, DC 20554.<sup>9</sup>

10. The response, if any, must be mailed to Federal Communications Commission, Office of the

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<sup>3</sup> See 47 C.F.R. §§ 17.21, 17.22, and 17.23.

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>5</sup> 47 C.F.R. § 1.80(b)(4).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>9</sup> See 47 C.F.R. § 1.1914.

Secretary, 445 12<sup>th</sup> Street SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. and FRN referenced in the letterhead above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to John W. Ashley DBA: Ashley Communications, 1301 N Wheeler Street, Plant City, Florida 33566.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow  
District Director, Tampa Office  
Enforcement Bureau

Attachment